

### **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated September 1, 2011 (hereinafter Office Action) have been considered. Claims 25, 35, 49-53, 55-62, 64 and 65 remain pending in the application. Claim 25 has been amended and claims 35, 53, 59-62, 64, and 65 have been canceled. No new claims have been added. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicant acknowledges the allowable subject matter of claim 53 identified on page 7 of the Office Action, subject to overcoming the rejection of claim 53 based on 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement.

Pursuant to MPEP 714.12-13, Applicant respectfully submits that this amendment and response should be considered by the Examiner and entered into the record, notwithstanding the amendments made to the claims. Applicant further submits that the instant amendment places the application in condition for allowance or at least places the application in better form for consideration on appeal, in that claim 25 has been amended to recite subject matter of claim 53 deemed allowable by the Examiner in the final Office Action. The amendments to claim 25 were not presented earlier because claim 53 had not previously been indicated as allowable, but was indicated as so for the first time in the final Office Action. For these reasons, the amendments to claim 25 were not earlier presented, but should now be considered and entered.

Claims 25, 35, 49-52, 55, 57, 59-62 and 64 stand rejected based on 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,496,361 to Moberg et al. (hereinafter "Moberg") in view of U.S. Patent No. 6,643,548 to Mai et al. (hereinafter "Mai"). Claims 56, 58, and 65 stand rejected based on 35 U.S.C. §103(a) as allegedly being unpatentable over Moberg and Mai, as applied to claims 25 and 35, and further in view of U.S. Patent No. 7,035,684 to Lee (hereinafter "Lee").

Applicant has elected to further prosecute claims directed to the allowable subject matter indicated by the Examiner in the Office Action. Claim 25 has been amended to include the feature of allowable claim 53 that the controller is configured to *select* the cardiac electrical signal from the electrical signals having an origin other than the heart based on temporal correlation of S1 heart sounds of the audio signal with QRS complexes of the cardiac electrical signal. Other portions of claim 25 have been amended to provide proper antecedent basis for the features incorporated into claim 25 from allowable claim 53. Applicant has canceled rejected claims 35, 59-62, 64, and 65 without prejudice or disclaimer.

Concerning the rejection of claim 53 based on 35 U.S.C. §112, first paragraph, amended claim 25 incorporates the features of allowable claim 53 in a form that obviates the Examiner's written description concern raised in the Office Action. Support for the amendment of claim 25 is found on page 31, lines 9-15, for example.

Because claim 25 has been amended to include the subject matter of allowable claim 53, and the language added to claim 25 is described in the specification in compliance with the written description requirement, Applicant submits that claim 25 is directed to patentable subject matter and is in condition for allowance. Applicant further submits that claims 49-52 and 55-58 are patentable and in conditional for allowance, at least for the reason of depending from a patentable independent claim. Applicant respectfully requests withdrawal of the rejections of the claims, and allowance of the application as amended.

It is to be understood that Applicant's election to further prosecute claims directed to the allowable subject matter identified in the Office Action does not constitute acquiescence to the Examiner's rejection of certain claims on substantive art grounds. In particular, Applicant does not acquiesce to the Examiner's characterization of the asserted art or Applicant's claimed subject matter, nor of the Examiner's application of the asserted art to Applicant's claimed subject matter. For example, Applicant respectfully maintains its teaching away argument presented in the previous responses, notwithstanding the Examiner's comments presented in the Office Action concerning same. However, in the interest of advancing prosecution and the application to allowance, Applicant has modified

the language of claim 53 (now incorporated in claim 25) to overcome the written description rejection of claim 53. Applicant reserves the right to address the Examiner's characterizations and rejections when prosecuting the rejected claims in one or more continuing applications.

Applicant respectfully submits that, in view of the amendments made to the claims and the remarks presented above, the application is in condition for allowance, timely notification of which is kindly requested.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.609PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,  
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